

23-26 of the presentence report -- all of which related to Petitioner's previous convictions. The Court heard argument and overruled the objections during the sentencing hearing. Accordingly, Petitioner's claims are without merit.

C. Amendment 709

Defendant asserts that his sentence should be adjusted based on Amendment 709 to the United States Sentencing Guidelines. Although included in his § 2255 motion, this issue is more appropriately presented under 18 U.S.C. § 3582(c)(2). However, the result is the same.

On November 1, 2007, the United States Sentencing Commission adopted Amendment 709, which amended § 4A1.2 -- the guideline addressing how misdemeanor and petty offenses are calculated when determining a defendant's criminal history score. Since Defendant was sentenced before November 1, 2007, Amendment 709 must be retroactive to apply in this case. Guideline § 1B1.10, titled Reduction in Term of Imprisonment as a Result of Amended Guideline Range (Policy Statement), lists all Guideline Amendments that are retroactive. Since Amendment 709 is not listed in § 1B1.10(c), it is not retroactive and, therefore, not applicable in this case.²

CONCLUSION

Again, even if equitable tolling applied to this situation, Petitioner's § 2255 habeas claims are without merit. Accordingly, Petitioner's Motion for Reconsideration (Doc. No. 63) is DENIED.

IT IS SO ORDERED this 21st day of July, 2008.

/s/ Wm. R. Wilson, Jr.
UNITED STATES DISTRICT JUDGE

²Doc. No. 62 (citations omitted) (emphasis in original).